



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Trevor Potter  
Caplin & Drysdale  
One Thomas Circle, N.W.  
Suite 1100  
Washington, DC 20005

APR - 6 2009

Scott E. Thomas, Esq.  
Dickstein Shapiro LLP  
1825 Eye Street, N.W.  
Washington, DC 20006

RE: MURs 5712 and 5799  
Senator John McCain

Dear Messrs. Potter and Thomas,

On August 14, 2007, you were notified that the Office of the General Counsel was prepared to recommend that the Commission find probable cause to believe that your client, Senator John McCain, violated 2 U.S.C. § 441i(e), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 300.62. Enclosed with that letter was the General Counsel's brief.

On March 18, 2009, the Commission considered the circumstances in this matter, but was equally divided on whether to find probable cause to believe that Respondent violated 2 U.S.C. § 441i(e)(1)(B) and 11 C.F.R. § 300.62. Instead, the Commission voted to dismiss the matter on the basis of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 821 (1985), and to close the file.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A Statement of Reasons further explaining the basis for the Commission's decision will follow.

In addition, we would like to inform you that you may request the transcript of the supplemental probable cause hearing in the above referenced matters. The transcript may be obtained by contacting:

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Jardim Reporting Associates, LLC  
1221 N. Powhatan Street  
Arlington, VA 22205  
(703) 867-0396

We have instructed Jardim that it may release a copy of the hearing transcript to you.

If you have any questions, please contact Jin Lee, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to be 'JM' or 'Julie McConnell', written over the printed name.

Julie McConnell  
Assistant General Counsel

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